

SHELLFISH CONSERVATION ORDINANCE FOR THE TOWN OF CUMBERLAND, MAINE

SECTION 101. TITLE

This ordinance shall be known and cited as the Shellfish Conservation Ordinance of the Town of Cumberland, Maine.

SECTION 102. AUTHORITY

This ordinance is enacted in accordance with 12 M.R.S.A. Section 6671, as amended from time to time.

SECTION 103. PURPOSE

The purpose of this Ordinance is to establish a shellfish conservation program for the Town of Cumberland which will ensure the protection and optimum utilization of shellfish resources within its limits. These goals will be achieved by means, which may include:

- A. Licensing;
- B. Limiting the number of shellfish harvesters;
- C. Restricting the time and area where digging is permitted;
- D. Limiting the minimum size of clams taken;
- E. Limiting the amount of clams taken daily by a harvester;

SECTION 104. CONSERVATION AND MANAGEMENT OF SHELLFISH RESOURCES

It is hereby determined as follows:

1. The clam-flats of the Town are a very valuable resource, which is important to the local economy.
2. These flats are not an inexhaustable resource, and, therefore, they must be prudently managed in order to remain viable.
3. As part of the management process, it may be necessary to: restrict the taking of shellfish by limiting the number of shellfish licenses, restrict the size and quantity of shellfish, which may be harvested, and, take other measures as Outlined in the Ordinance.

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SECTION 105. DEFINITIONS

Resident: The term "resident" refers to a person who has been domiciled in this municipality for at least 180 days prior to the time his claim of such residence is made, or a person who has paid property taxes on property located in the Town of Cumberland in the calendar year preceding the year in which the license is being issued.

Non-resident: The word "non-resident" shall mean anyone not qualified as a resident under this Ordinance.

Taxpayer: "Taxpayer" shall mean the owner of real estate located in the Town of Cumberland.

Guest: "Guest" means any person, adult or child invited to assist the holder of a Recreational Shellfish License.

Shellfish: "Shellfish" means soft-shell clams (*Mya Areniaria*) and quahogs (*Mercenaria Mercenaria*).

Lot: The word "lot" as used in this Ordinance means the total number of soft-shell clams in a bulk pile. Where soft-shell clams are in a box, barrel, or other container, the contents of each box, barrel or other container constitutes a separate lot.

Municipality: "Municipality" refers to the Town of Cumberland, Maine.

Town: "Town" means the Town of Cumberland, Maine.

Town Closed Conservation Area: "Town Closed Conservation Area" means a clam flat or clam flats closed pursuant to Section 116 of this Ordinance.

Volunteer: "Volunteer," means a person who participates in any of the activities of the Shellfish Conservation Commission

.SECTION 106. LICENSING

A municipal Shellfish License is required. It is unlawful for any person to dig or take shellfish from the shores and flats of this municipality without having a current, valid license issued by this municipality as provided by this Ordinance. No person shall be issued a Municipal Shellfish License who, upon the time of request, has failed to appear in court for a shellfish violation, or has failed to pay outstanding shellfish violation fines.

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SECTION 107. HARVESTING

The harvesting of shellfish within the Town of Cumberland is permitted only during those hours starting 1/2 hour before sunrise and ending 1/2 hour after sunset. It is unlawful to harvest shellfish during the time starting 1/2 hour after sunset to 1/2 hour before sunrise.

In an effort to maintain shoreline stability, shellfish harvesting is prohibited in or adjacent to areas of saltmarsh cordgrass, (*Spartina alterniflora*).

Harvesting of shellfish is only permitted with tools that have equally spaced tines such as a clam hoe or spading fork. Using shovels and garden spades are not permitted since they result in many broken clams.

SECTION 108. DESIGNATIONS, SCOPE AND QUALIFICATIONS

1. COMMERCIAL LICENSES:

a. Resident Commercial Shellfish License:

This license is available to residents and/or taxpayers of the Town of Cumberland and entitles the holder to dig and take *two (2) bushels* of shellfish *per tide* from the shores and flats of this municipality and reciprocating municipalities. The licensee will be permitted to harvest *ninety (90) days* commercially throughout the year. The licensee will maintain an accurate log of the days harvested commercially in his required Shellfish Harvesting Log, which is due November 30th each year. The commercial license will revert to a recreational license the remaining two-hundred and seventy-five (275) days of the year.

Non -Resident Commercial Shellfish License:

This license is available to non-residents of this municipality and entitles the holder to dig and take *two (2) bushels* of shellfish *per tide* from the shores and flats of this municipality. The licensee will be permitted to harvest *ninety (90) days* commercially throughout the year. The licensee will maintain an accurate log of the days harvested commercially in his required Shellfish Harvesting Log, which is due November 30th each year. The commercial license will revert to a recreational license the remaining two-hundred and seventy-five (275) days of the year.

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2. Qualifications Specific to Commercial Shellfish Licenses:

- a. The Shellfish Conservation Commission may specifically designate the period of validity as well as the areas open to commercial harvesting each year.
- b. Commercial Shellfish License holders are supplied with, and required to keep, a Shellfish Harvesting Log which must be submitted to the Town Clerk no later than November 30th each year. The Log will include the license holder's name and address and will show the date, location, and number of bushels harvested during each tide. Commercial License holders who do not submit Harvesting Logs, as required, will not be eligible for a Commercial License during the next period of issuance of Commercial Licenses.

3. RECREATIONAL SHELLFISH LICENSES:

A person holding a recreational shellfish license may not engage in the wholesale or retail sale of any shellfish harvested under that license. Recreational shellfish licenses are not available and not valid for a person who holds a shellfish license issued by the Commissioner of Marine Resources, or a recreational license issued by any other municipality.

Maine certified shellfish wardens of the Town of Cumberland shall be issued a recreational shellfish license.

a. Resident Recreational Shellfish License:

This license is available to residents and/or taxpayers of the Town and entitles the holder to dig and take no more than *one (1) peck of shellfish per tide* for the use of himself and his immediate family.

b. Non-Resident Recreational Shellfish License:

This license is available to non-residents of the Town, and entitles the holder to dig and take no more than *one (1) peck of shellfish per tide* for the use of himself and his immediate family.

c. Monthly Recreational Shellfish License:

During the months of June, July, August, and September, a specific number of licenses will be available for issuance during each of the four months and will be valid only for the month in which it is issued.

(For example - If ten licenses are available for the month of June, they will not be sold before June 1st and, regardless of the day of the month they are sold, they will expire at midnight on June 30th.) It entitles the holder to dig and take no more than *one peck of shellfish per tide* for the use of himself and his immediate family.

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- d. **Daily Recreational Shellfish Licenses:**
This license is available only during the months of June, July, August, and September, and is valid only the day for which it is issued. Daily Recreational Shellfish Licenses will be sold commencing on the first day of the month during which the day for which it is valid occurs. Only one license will be available for each day of the month and only one daily license per month may be issued to any one person.
- e. At no time shall any recreational license holder and guests be allowed to harvest a combined total that exceeds *one peck of shellfish per license/per tide*.
- f. A Shellfish License must be on your person when harvesting shellfish.
- 4. **Volunteer Program:**
 - a. Should any volunteer participate in ten (10) or more hours of Shellfish Conservation Commission activities in a calendar year, that person will be assured a recreational or commercial license, applied for in the following year (cost of license responsibility of applicant and based on availability of Commercial Licenses).
 - b. Volunteer hours are to be recorded by a member of the Shellfish Conservation Commission present for that activity in which the volunteer has participated.

SECTION 109. FEES

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|----|---|--|
| 1. | Resident Commercial Shellfish License: | \$50.00 |
| 2. | Non-Resident Commercial Shellfish License | 100.00 |
| 3. | Resident Recreational Shellfish License: | 15.00
Over age 62 is free |
| 4. | Non-Resident Recreational Shellfish License | 30.00
Over age 62 is free |
| 5. | Monthly Recreational Shellfish License | Resident - 10.00
Non -Resident - 20.00
Over age 62 is free |
| 6. | Daily Recreational Shellfish License | 5.00
Over age 62 is free |

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SECTION 110. SIGNATURE ON LICENSE

The licensee must sign the shellfish license to make it valid.

SECTION 111. LICENSE APPLICATION

Applicants must apply in person (no agents or power of attorneys accepted), except as may otherwise be required by State or Federal statute, to the Town Clerk for the licenses required by this Ordinance on forms provided by the municipality.

SECTION 112. CONTENTS OF THE APPLICATION

The application must be in the form of an affidavit and must contain the applicant's name, current address, birth date, height, weight, signature, and whatever information the municipality may require.

SECTION 113. MISREPRESENTATION

Any person who gives false information on a shellfish license application, will cause said shellfish license to become invalid and void.

SECTION 114. LICENSE EXPIRATION DATE

Each shellfish license issued under the authority of this Ordinance expires at midnight on the 31st day of December next following date of issue, unless otherwise specified in this Ordinance; see Section 108(2) (a) & Section 108 (3) (c).

SECTION 115. RECIPROCAL HARVESTING PRIVILEGES

Licenses from any other municipality cooperating with this municipality on a joint shellfish management program may harvest shellfish according to the terms of their shellfish licenses.

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SECTION 116. NUMBERS OF LICENSES AND NOTICE OF PERIOD OF ISSUANCE

Because the shellfish resources are limited and because a commercial or recreational digger can be expected to harvest a certain volume of clams per year, the number of diggers must be controlled. This number will vary from year to year depending upon estimates of the resource capabilities and management requirements consistent with good resource utilization. The following procedures will be followed to exercise control:

1. Prior to November 1, the Town Shellfish Conservation Commission with the approval of the Commissioner of Marine Resources shall prepare its recommendation to the town Council of the number of resident and non-resident commercial and recreational shellfish licenses to be made available.
2. The Shellfish Conservation Commission will notify the Town Clerk and the Town Council in Cumberland in writing prior to December 1 of the number of resident and non-resident commercial and recreational shellfish licenses to be made available. The Town Council then shall adopt a shellfish license allocation. The Shellfish Conservation Commission, in preparing a recommended allocation of shellfish licenses, and the Town Council, in adopting an allocation of shellfish licenses, shall provide and reserve a minimum number of shellfish licenses for non-residents, which shall be a number not less than 10% of the number of shellfish licenses provided for residents. When the number of resident shellfish licenses is less than ten (10) but more than five (5), at least one (1) non-resident commercial shellfish license shall be provided. When the number of resident shellfish licenses is five (5) or fewer, non-resident shellfish licenses shall not be required.
3. The period of issuance for shellfish licenses shall be from *January 1st to March 31st* each year - except for Commercial, Non-Resident Commercial and Non-Resident Recreational Shellfish licenses which shall be issued pursuant to 116.5.a. After *March 31st*, any remaining shellfish licenses shall be issued to Residents and Non-Residents on a first come first serve basis.
4. At least ten (10) days prior to the issuance of shellfish licenses, the Town Clerk upon direction of the Town Council, shall provide notice of the number of shellfish licenses, resident and non-resident, and the procedure for application for such shellfish licenses by publishing the same in a trade or industry publication or in a newspaper or combination of newspapers with general circulation which the Town Council considers effective in reaching persons affected, and by posting the same in the Town Office until the period of issuance concludes.

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5. The Town Clerk shall issue Commercial, Non-Resident Commercial and Non-Resident Recreational Shellfish licenses as allocated, according to the following procedures:
 - a. The Town Clerk and/or Deputy Town Clerk shall accept applications for Commercial, Commercial Non-Resident and Non-Resident Recreational Shellfish licenses from resident and non-resident applicants during regular town office hours through the month of December.
 - b. The Clerk shall prepare a list of the names of the qualifying applicants; the list need not be in any particular order. Next to each name on the list, the clerk shall enter a unique three-digit number, selected at random, and shall write each such number on an index card. All the index cards shall be of uniform size, color and texture.
 - c. The numbered index cards shall then be placed in a box or other container capable of being closed and sufficiently large so the index cards can be easily mixed by shaking the container.
 - d. The Clerk's assistant shall shake the container in order to mix the contents, and shall then place or hold the container at a location above the Clerk's eye level, so that the Clerk can reach into the container and withdraw cards without seeing the numbers on the cards.
 - e. The Clerk shall withdraw all of the cards one-by-one, reading each number drawn out loud. The Clerk's assistant shall make a list of each of the numbers so drawn in the order in which they are drawn. Then, using the list prepared under subparagraph (b) above, the Clerk shall place the corresponding applicant's name next to each number.
 - f. The Clerk shall then issue the available shellfish licenses to the qualifying applicants, first to residents and then to non-residents, in the order in which their names appear on the list prepared under subparagraph (e). That list shall establish the order of priority for the issuance of any Commercial, Non-Resident Commercial and Non-Resident Recreational Shellfish licenses until the next annual licensing procedure under this Ordinance.
 - g. The procedure set forth in this Section 116 shall be a public proceeding open to the public, but no applicant or any member of the public has any right to participate in the procedure. Applicants are not required to be present at the time the issuance list is established. The procedure shall be conducted at the Cumberland Town Office on the date designated in the Town Clerk Notice as provided in Section 115.4, at a time set by the Town Clerk. The Clerk shall announce the exact time for the procedure by posting a notice in the Cumberland Town Office at least seven (7) days prior to the date of the procedure. Any failure to provide such notice shall not invalidate the results of the procedure.
 - h. Any Commercial, Non-Resident Commercial and Non-Resident Recreational Shellfish licenses remaining available after the lottery process shall be subject to the period of issuance procedure as defined under Section 116.3 of this Ordinance.

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6. A copy of the Cumberland Shellfish Ordinance shall be given with each shellfish license issue.

SECTION 117. OPENING AND CLOSING OF FLATS

The Town Council with the approval of the Commissioner of Marine Resources may open and close clam-flats. When information in the possession of the Shellfish Conservation Commission indicates that a clam flat should be opened or closed, it shall immediately advise the Town Council. The Town Council shall call a public hearing on 10-days notice published in a newspaper having general circulation in the Town, stating the time, place and subject matter of the hearing; and shall send a copy of the notice to the Department of Marine Resources. At the hearing, the Commission shall present evidence obtained from its survey and other sources, and members of the public may present evidence in support or refutation of the evidence presented by the Commission.

After the hearing is closed, the Town Council shall make findings of fact on the relevant evidence presented. If the request is to open the flat, the Town Council shall then make a conclusion based on those findings of fact as to whether opening the flat is warranted by the recovery of the resource; or the freedom from predation, competition or other resource problem. If so, the Town Council with the concurrence of the Department of Marine Resources shall order the flat opening and shall set such time limitation and other harvesting conditions as are consistent with good conservation practices. If the request is to close the flat, the Town Council shall make a conclusion based on their findings of fact as to whether closing the flat is warranted by depletion of the shellfish, destruction of existing seed, or predation, competition or other resource problem. If so, the Town Council shall order the flat closed until further request for opening by the Commission. The Commissioner of Marine Resources prior to enactment shall approve any proposal for opening or closing the flats.

SECTION 118. MINIMUM LEGAL SIZE OF SOFTSHALL CLAMS

Pursuant to 12 M.S.R.A. ss 6671 and 6681, as amended from time to time, it is unlawful to possess soft-shelled clamshell stock whose shells are less than 2 inches in the largest diameter. For purpose of this Ordinance, the term "possess", means dig, take, harvest, ship, transport, hold, buy, and sell retail and wholesale soft-shelled clam shell stock.

SECTION 119. METHOD OF DETERMINING TOLERANCE

Pursuant to 12 M.S.R.A. ss 6671 and 6681, as amended from time to time, any person may possess soft-shelled clams that are less than 2 inches if they comprise less

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than 10% of any bulk pile. The tolerance shall be determined by numerical count of not less than one (11) peck nor more than four (4) pecks taken at random from various parts of the bulk pile or by a count of the entire pile if it contains less than one peck.

SECTION 120. SHELLFISH CONSERVATION COMMISSION

The Shellfish Conservation Program for the Town of Cumberland will be administered by the Shellfish Conservation Commission of five (5) members. The Cumberland Town Council will appoint the Shellfish Conservation Commission members. In addition, the Shellfish Conservation Warden shall serve as an ex-officio member.

1. The Commission's responsibilities include:
 - a. Establishing, annually, in conjunction with the Department of Marine Resources, the number of shellfish digging licenses to be issued;
 - b. Surveying the clam flats to maintain current information on shellfish resources;
 - c. Submitting to the Town Council proposals for the expenditures of funds for the purpose of shellfish conservation;
 - d. Keeping this Ordinance under review and making recommendations for its amendments;
 - e. Securing and maintaining records of shellfish harvest from the Town's managed shellfish areas and closed areas that are conditionally opened by the Department of Marine Resources;
 - f. Recommending conservation closures and openings to the Town Council in conjunction with the Department of Marine Resources.
 - g. Submitting an annual report to the Municipality and the Department of Marine Resources covering the above topics and all other Commission activities.

SECTION 121. ENFORCEMENT, PENALTY, SEPARABILITY, REPEAL & DURATION

1. **Enforcement.** The Chief of Police, members of the Cumberland Police Department, special police officers as provided in 30-M.R.S.A. Section 2672 and the Shellfish Conservation Warden, shall enforce this Ordinance.
2. **Penalty.** A person who violates this Ordinance shall be punished as provided in 12 M.R.S.A. Section 6671 as, amended from time to time.
3. **Separability.** If any provision of this Ordinance is declared to be invalid, that declaration does not affect the remainder of the Ordinance.
4. **Duration.** ~~This Ordinance shall remain in effect until December 31, 2003.~~
(sunset provision deleted by Town Council 5-24-04)

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5. **Repeal.** Any Ordinance regulating the harvesting or conservation of shellfish in the Town is hereby repealed. This includes any provision of other Town Ordinances, which are inconsistent with this Ordinance.

SECTION 122. MISREPRESENTATION

It shall be unlawful and a violation of this Ordinance, for any person to falsify or give false information in connection with a shellfish license application. In addition to any criminal penalties which may result from a violation of this Ordinance, the shellfish license granted to any person who gave false information on a shellfish license application will automatically be void.

SECTION 123. SUSPENSION

1. **Violations of Shellfish Ordinance:** The Town Clerk shall suspend any and all shellfish licenses issued under this Ordinance, if the license holder is convicted in court of violating any section of this Ordinance.

2. **Suspension based on conviction in a Town Closed Conservation Area:** The Town Clerk shall suspend any and all shellfish licenses issued under this Ordinance if the license holder has been convicted in court of possessing shellfish from a Town Closed Conservation Area.

3. **Length of Suspension for Numbers 1 and 2 Above:** The suspension of a license may not exceed the following:

- a. 30 days from the date of first conviction.
- b. 365 days (one year) from the date of the second conviction.

4. **Applicable Standards:** Any conviction more than three (3) years before last conviction shall not be counted in determining lengths of suspension.

SECTION 124. SUSPENSION BASED ON REFUSING INSPECTION

The Town Clerk shall suspend any and all shellfish licenses if the license holder refuses to allow inspection in the enforcement of the Ordinance. This suspension may not exceed 90 days.

SECTION 125. HEARING

Any licensee whose shellfish license has been suspended shall be entitled to a hearing before the Town Manager, upon the filing of a written request for hearing with the Town Manager within thirty (30) days following the effective date of suspension.

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The applicant shall be given at least seven (7), days prior written notice of the date, time, and place of hearing before the Town Manager. Any person aggrieved by the Town Manager's decision may appeal to the Superior Court within thirty (30) days from receipt of the Town Manager's written decision pursuant to Rule 80B of the Maine Rules of Civil Procedure.

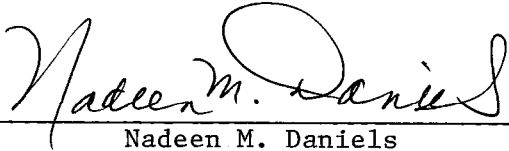
SECTION 126. APPOINTMENT OF SHELLFISH CONSERVATION COMMISSION WARDEN; COMPENSATION; REMOVAL

The Town Council shall appoint a Shellfish Conservation Warden yearly, and establish the Shellfish Conservation Warden's compensation and, for cause by them declared in writing, after due notice to the officer and hearing, if requested, remove the Shellfish Conservation Warden and appoint another one.

IN ACCORDANCE WITH STATE LAW THIS ORDINANCE EXPIRES WITHIN THREE YEARS OF THE REVISED DATE.

Effective Date: January 1, 2001

A TRUE ATTESTED COPY:



Nadeen M. Daniels
Town Clerk

Enacted 10-15-81
Re-enacted 1984
Re-enacted 1987
Revised 1990
Re-enacted Dec. 1991
Revised Jan. 1994
Amended Jan. 1995
Revised Jan. 1997
Amended Jan. 1998
Amended Dec. 1998
Enacted Nov. 1999
Revised 12-11-2000
Revised 5-24-04
Re-enacted 5-24-04